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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

Germany

1. The Committee considered the fourth periodic report of Germany (CCPR/C/84/Add.5) at its 1551st to 1553rd meetings, held on 4 and 5 November 1996 (CCPR/C/SR.1551-1553), and adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the presence of a high level delegation. It expresses its appreciation for the quality of the report, and the detailed, frank and competent manner in which the delegation answered written and oral questions. The Committee notes with satisfaction that this information enabled it to engage in a highly constructive and fruitful dialogue with the State party.

B. Factors and difficulties impeding the implementation of the Covenant

3. The Committee notes that the process of reunification of Germany has posed particular problems for the uniform application of the Covenant throughout the territory of Germany. The extension of the political, economic, and social system of the western part of the State to the territory of the former German Democratic Republic (GDR) has posed novel, difficult and sensitive questions.

1/ At its 1558th meeting, held on 7 November 1996.

C. Positive aspects

4. The committee welcomes the fact that the reunification of Germany has enabled people of the former GDR to enjoy many of the rights and freedoms protected by the Covenant which were formerly denied to them.

5. The Committee notes with satisfaction that Germany has acceded to both Optional Protocols to the Covenant.

6. The Committee greatly appreciates the role of the Federal Constitutional Court's role in protecting individuals against the violation of their rights as established by the Basic Law and ensuring conformity of legislation with the Basic Law.

7. The Committee welcomes the adoption of the Second Equal Treatment Act to advance the interests of women in the federal public administration, and the modification of the EC adaption law to ensure that the ban on discrimination is more effectively applied.

8. The Committee appreciates the measures adopted for granting compensation and providing rehabilitation to those who suffered injustice at the hands of the Socialist Unity Party (SED) regime in the former GDR.

9. The Committee welcomes the efforts made by the State party to counter racism, anti-Semitism and xenophobia, though it regrets that this phenomenon is still persisting.

10. The Committee appreciates that Germany has provided temporary residence to a very large number of refugees from Bosnia and Herzegovina. The Committee welcomes the assurance given by the delegation that the return of these refugees will be primarily through voluntary repatriation and if any involuntary repatriation is made, it will be only in coordination with the Government of Bosnia and Herzegovina and the Office of the United Nations High Commissioner for Refugees, and will be subject to challenge by judicial review. The Committee appreciates the assurance that no repatriation will take place to minority areas in Bosnia and Herzegovina or to majority areas which are not considered safe.

D. Principal subjects of concern and suggestions and recommendations

11. The Committee expresses its concern that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum seekers. In this regard, it is concerned that there is no truly independent mechanism for investigating complaints of ill-treatment by the police. The Committee therefore recommends the establishment of independent bodies throughout the territory of the State party for the investigation of complaints of ill-treatment by the police.

12. Though the Committee finds that programmes of education of young people and training of police officers concerning racism, anti-Semitism and xenophobic attitudes have been started, it regrets that broader educational

and training programmes in human rights values does not appear to have received the same level of support. The Committee also expresses its concern that despite significant efforts by the Government, racism, xenophobia and anti-Semitism still persist among certain segments of the population. The Committee thus recommends that efforts to educate the youth and train the police that racism and xenophobia are violative of basic human dignity, contrary to fundamental values and constitutionally and legally impermissible, should be intensified and urges that such education and training should be placed in the wider context of human rights education and training. The Committee urges the Federal and Länder Governments to introduce courses in human rights in school, colleges and universities and also in police and defence academies with a view to strengthening a culture of human rights.

13. The Committee is concerned that the definition of minorities as "ethnic or linguistic groups who have a traditional area of settlement in particular regions", as stated in paragraph 244 of the report, is much too restrictive in terms of article 27 of the Covenant. The Committee is of the view that article 27 applies to all persons belonging to minorities whether linguistic, religious, ethnic or otherwise including those who are not concentrated or settled in a particular area or a particular region or who are immigrants or who have been given asylum in Germany.

14. The Committee regrets that Germany has made a reservation excluding the competence of the Committee under the Optional Protocol with regard to violation of rights as protected by article 26 of the Covenant.

15. The Committee expresses its concern that solitary confinement can be imposed for a period of up to three months and can be further extended by court order.

16. The Committee is concerned that membership in certain religious sects as such may in some Länder of the State party disqualify individuals from obtaining employment in the public service, which may in certain circumstances, violate the rights guaranteed in articles 18 and 25 of the Covenant. The Committee also recommends the State party to discontinue the holding of "sensitizing" sessions for judges against the practices of certain designated sects.

17. The Committee expresses its concern that the criteria used to evaluate for retaining or dismissing former GDR public servants, including judges and teachers, are vague and leave open the possibility for deprivation of employment on the basis of political opinions held or expressed. The Committee therefore suggests that the criteria for dismissing public servants of the former GDR be made more precise so that no public servant will be dismissed on the ground of political opinion held or expressed by him or her.

18. The Committee is concerned that there is an absolute ban on strikes by public servants who are not exercising authority in the name of the State and are not engaged in essential services, which may violate article 22 of the Covenant.

19. The Committee is concerned that the State party has not provided information in respect of the right to form and join trade unions (art. 22 of the Covenant) or on aspects of the rights of children (art. 24 of the Covenant) on the ground that information had been provided to another treaty body. In this regard, the Committee reminds the State party that reports under article 40 of the Covenant should provide information in respect of all Covenant rights.